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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/632,803	08/04/2000	Theodore Rappaport	02560036aa	2515

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EXAMINER

BRODA, SAMUEL

ART UNIT PAPER NUMBER

2123

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/632,803	Applicant(s) RAPPAPORT ET AL.	
	Examiner Samuel Broda	Art Unit 2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/10/03, 11/12/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This communication is in response to Applicants' Response to Restriction Requirement and Preliminary Amendment (the "Response") received on 26 April 2004.

In the Response, Applicants elected without traverse the invention of Group III, corresponding to claims 33-73; Applicants canceled claims 1-32 and amended claims 33, 52, and 63.

Claims 33-73 have been examined.

Drawings

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed. Figures 1-9 are additionally objected to because no reference identifiers are shown or included in the text of the Specification to explain and/or identify the specific content of these figures.

Specification

3.1 The disclosure is objected to because of the following informalities:

- (1) the references to related co-pending Applications are now obsolete and require updating to reflect current application serial numbers and/or patent numbers;
- (2) the reference to application 09/352,679 appears to be a typographical error with the correct application number being 09/352,678 (corresponding to U. S. Patent 6,499,006);

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- (3) the Specification refers to “psuedonoise” and the correct spelling of this term appears to be “pseudonoise”; and
- (4) the Specification appears to include no explanation or identification of the specific content of Figs. 1-9.

Correction is required; note that modifications made to the Specification that are not accompanied with a citation for support from other Applications incorporated by reference will be treated as new matter.

3.2 The attempt to incorporate subject matter into this Application by reference to U. S. Patent Numbers 6,317,599, 6,442,507, 6,493,679, and 6,499,006 is improper because the Application:

- (1) does not appear to contain “essential material” which describes the claimed invention and provides an enabling disclosure; and
- (2) attempts to incorporate subject matter from other applications which themselves incorporate “essential matter” by reference.

See MPEP § 608.01(p).

For example, at page 23 of the Specification the disclosure corresponding to the limitation of the “computerized model which represents a physical environment” appears to disclosed in Application 09/318,841, and the disclosure corresponding to limitation of the “prediction model[s]” appears to be disclosed in Application 09/221,985. The remainder of the

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Specification fails to adequately disclose each limitation of claim 33 but instead points to other applications.

Claim Objections

4. The following is a partial quotation of 37 CFR § 1.75:

(a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.

4.1 Claims 40 and 59 are objected to because of the following:

- (1) line 3 of each claim includes the term “different;” whereas the correct term appears to be “different:”; and
- (2) lines 5 and 6 of claim 40 and line 6 of claim 59 includes the term “psuedonoise” whereas the correct spelling of this term appears to be “pseudonoise”.

Correction is required.

Claim Interpretation

5. In order to expedite the examination of claims 33-73 and eliminate possible uncertainty regarding the scope of these claims, the following claim interpretation is used in the examination of independent claim 33. A similar interpretation is used for independent claim 52.

Amended claim 33 reads as follows (emphasis and indentations added):

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A method for designing, managing, optimizing or maintaining a communications network or communications networks, comprising the steps of:

providing

(A) a computerized model which represents a physical environment in which a communications network may be installed, said computerized model providing a display of at least a portion of said physical environment,

(B) performance attributes for a plurality of system components which may be used in said physical environment, and

one or more of:

(C) one or more prediction models which use the computerized model and the performance attributes of specific components of said plurality of system components to predict performance characteristics of said communications network,

(D) actual performance measurements taken from said physical environment at one or more locations during one or more measurement runs;

providing cost data associated with the installation, procurement, or maintenance of said communications network or one or more specific system components;

selecting specific components from said plurality of system components for use in said communications network; and

displaying a computer representation of said physical environment using said computerized model, said computer representation showing locations of specific

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components selected in said selecting step within said physical environment and performance information for one or more locations within said physical environment, said performance information being **any one or more** of the following:

(A) presented at said one or more locations in the form of one or more icons,

(B) showing a comparison of actual performance measurements to predicted performance values,

(C) showing a comparison of actual performance measurements taken during two or more measurement runs, and

(D) showing a comparison of at least two difference predictions made with at least two different simulations.

As understood by the Examiner, the first “one or more of” appearing after item (B) in line 10 only applies to items (C) and (D) that appear on lines 11-15 of the claim. The “one or more of” appearing in line 25 applies to items (A) through (D) that appear on lines 26-32 of the claim.

Claim Rejections - 35 U.S.C. § 112, First Paragraph

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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6.1 Claims 33-73 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

6.2 Regarding independent claims 33 and 52, each independent claim includes the limitation “providing cost data associated with the installation, procurement, or maintenance of said communications network or one or more specific system components.” This limitation did not appear in the set of claims 1-33 originally filed in the Application; additionally, the text and figures of the Specification do not appear to reference any cost data associated with any components.

6.3 All claims dependent from either claim 33 or claim 52 inherit this defect and are rejected.

Claim Rejections - 35 U.S.C. § 112, Second Paragraph

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7.1 Claims 33-73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

7.2 Regarding independent claims 33 and 52, each independent claim includes the limitation “providing cost data associated with the installation, procurement, or maintenance of said communications network or one or more specific system components” and the next limitation refers to “selecting specific components from said plurality of system components.” (Emphasis added.) It is unclear if each of these limitations is referring to the same or different components.

Additionally, the limitation to “providing cost data” quoted above appears in system claim 52 as a step limitation, and it is unclear if Applicants intend this interpretation. This limitation did not appear in the set of claims 1-33 originally filed in the Application; additionally, the text and figures of the Specification do not appear to reference any “cost data” associated with any components.

7.3 Claims 33-73 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are the relationships between the limitation of “providing cost data” and the remainder of the limitations. There appears to be no connection

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between the “cost data” and the “performance information” that is shown in the computer representation.

Because of the lack of disclosure in the Specification regarding this limitation and uncertainty regarding its relationship to the limitations, it is unclear whether any patentable weight can be given to this limitation.

7.4 All claims dependent from either claim 33 or claim 52 inherit this defect and are rejected.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Samuel Broda, whose telephone number is (703) 305-1026. The Examiner can normally be reached on Mondays through Fridays from 8:00 AM – 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kevin Teska, can be reached at (703) 305-9704. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist, whose telephone number is (703) 305-3900.



**SAMUEL BRODA, ESQ.
PRIMARY EXAMINER**